REMARKS

Applicants respectfully request reconsideration of the application in view of the reasons that follow.

I. Status of the Claims and Amendments

Claim 18 is added. Exemplary support can be found throughout the specification as filed, including the original claims. No new matter is believed to be added.

Upon entry of this response, claims 1-18 will be pending, with claims 1-4 and 9-14 withdrawn. Thus, claims 5-8 and 15-18 will be subject to examination.

II. Claim Rejections – 35 U.S.C. § 102(b)

Claims 5, 7, 8, 15, 16, and 17 stand rejected as allegedly anticipated by U.S. Patent No. 4,230,687 to Sair *et al.* According to the Office Action, "the method of making the encapsulation material disclosed by Sair et al. is different from the method of making the encapsulation material recited in the instant claim." Yet, the action also contends that "the product disclosed by Sair et al. would *necessarily* be the same as the product recited in the instant claim." Office Action at 3 and 4.

Applicants respectfully traverse this ground of rejection. In particular, it is factually incorrect that a "necessary" identity exists between "the product disclosed by Sair et al." and the claimed invention. In fact, the different manufacturing methodologies acknowledged by the Office Action assures that a product as claimed cannot be the same as Sair's product. Accordingly, Sair does not anticipate the claims

With respect to claim 5 and its dependents, Sair does not disclose an encapsulation material that "releases the therapeutic and nutritional agents in predetermined locations in the gastrointestinal tract," as presently recited. Sair discloses a procedure that requires relatively high temperatures to melt the matrix. For instance, see Sair's abstract and working example. The oil or bioactive substance is inserted, per Sair, into this high viscosity melt for encapsulation. This was meant to address problems with high temperature spray-drying procedures.

Due to the melting procedure, for example, Sair's methodology is likely to affect adversely the shelf-life of the encapsulated material, and it does not provide the same type of core/ shell type protective encapsulation that is achieved by this invention. It is unsurprising, therefore, that nothing in Sair suggests that its product could "release[] the therapeutic and nutritional agents in predetermined locations in the gastrointestinal tract," as claim 5 recites.

Claims 17 and 18 further distinguish over Sair because the reference does not disclose forming an emulsion. Indeed, the Office Action agrees, at page 3, that "the method of making the encapsulation material disclosed by Sair et al. is different from the method of making the encapsulation material recited in the instant claim." Moreover, the resulting products would differ due to the different methodologies, as discussed above. Thus, Sair's method does not result in the same type of core/ shell type protective encapsulation that the claimed invention achieves.

For at least these reasons, applicants respectfully request reconsideration and withdrawal of this ground of rejection.

CONCLUSION

Applicants believe that the present application is in condition for allowance. Favorable reconsideration is requested, therefore. Also, Examiner Yu is invited to contact the undersigned directly, should any issue warrant further consideration.

Respectfully submitted,

Date July 6, 2010

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The Commissioner is hereby authorized to charge any additional fees, which may be required regarding this application under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany the response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extensions of time are needed for timely acceptance of submitted papers, Applicants hereby petition for such extension under 37 CFR §1.136 and authorizes payment of any such extensions fees from the deposit account.